



Town of Westminster

MASSACHUSETTS 01473
FROM THE OFFICE OF THE
PLANNING BOARD

Phone: (978) 874-7414

swallace@westminster-ma.gov

Jon Wyman, chairman

Marie N. Auger, vice chairman

Michael Fortin

Andrew Rice

Linda Wiest

MINUTES OF REGULAR MEETING

October 11, 2016

Room 222, Town Hall

Attendees: Jon Wyman, Marie Auger, Mike Fortin, Andrew Rice, Linda Wiest, Town Planner Stephen Wallace

Absent: none

Additional Attendees: Mr. Kenneth Smith, Ms. Sandra James, Ms. Barbara Campbell, Mr. Peter CampoBasso, Ms. Laura McKinnon, Mr. John Joebert, Ms. Lindalar Picard, Mr. Matt N. Johnson, Mr. Vincent Jamieson (did not sign in).

7:00 p.m.

Jon opened the Planning Board meeting and informed those present the meeting was being audio recorded.

7:00 p.m. - *Minutes*

Jon passed over review of the draft September 27, 2016 minutes which were not available.

7:01 p.m. - *ZBA Request for Review and Comment: Variance application for Derek Asadoorian to erect a canvas garage at 26 Leominster Street.*

Stephen summarized the ZBA Request for comment. Erect a canvas garage on an existing non conforming lot withing the setback requirements. Jon asked the PB to review the material received from the ZBA. After discussion about the structure, its size and the proposed location of the structure, Linda made a motion the PB support the variance request. Seconded Marie. Marie questioned the interpretation of whether the garage was a permanent structure or a temporary structure. The Board voted 3 in favor – 2 opposed to support the request.

7:14 p.m. - *ZBA Request for Review and Comment: Appeal of Building Commissioner decision that lot at 13 Laurie Lane is not entitled to protection as a pre-existing non-conforming lot for the purpose of building a new housing unit.*

Jon told the Board he was recusing himself from this request because he knows Mr. Normandin and is a property owner in the the Edro Isle subdivision. Jon told the Board his deed is of a similar beach right situation to the property owners in this case.

Stephen summarized the ZBA Request for comment by reading a brief synopsis to the Board: The case stems from a subdivision on Laurie Lane near Wyman Pond that the Planning Board approved back in the 1940s. Of the twenty or so lots created, two were labeled on the plan as “beach lots” and each of the lots for this subdivision have beach access rights written into their deeds (described as an “easement”). Mr. Normandin bought one of the beach lots and sought a zoning determination from the Building Commissioner that would allow a house to be built on one of the beach lots. The Building Commissioner at the time determined that a house could be built on the lot without

extinguishing the abutters rights to have an easement on the lot that allows access to the beach. The Commissioner's decision was appealed by an abutter and the Zoning Board affirmed the Commissioner's decision. The abutter took the matter to court, but was denied standing. The Judge stated that the case was denied for "standing" and not on the merits of the case. Mr. Normandin has now applied for a building permit for the beach lot, but our new Building Commissioner denied the permit under the reasoning that the lot was held under common ownership (all the abutters having beach rights) and was not entitled to protection as a pre-existing non-conforming lot under MGL 40A, Section 6.

Mr. Vincent Jamieson questioned a point of order. Mr. Jamieson told the Board: "The statement that this has to do with the Edro Isle subdivision and two beaches depicted on a subdivision plan approved in 1957 by the Westminster Planning Board is totally erroneous. (*Note: no such assertions were made as the tape recording clearly determines*) Mr. Jamieson told the Board "the subdivision plan we are talking about is the Laynes Shores subdivision plan that was approved in the late 1960s by the same Henry Fredette who approved and processed this Planning Board the Washington Drive subdivision. This is a beach area that was created by subdivision control law as the result of a land use restriction that Mr. Fredette placed on to the benefit of all these people who have a express beach area easement in their deeds. The point of order I would like to make is that this has nothing to do with the Edro Isle subdivision and the two beach areas and in fact I have the plans to show you that are time stamped." Marie questioned Mr. Jamieson mentioning more than one beach area and state she was not sure what beach area Mr. Jamieson was referring to. Mr. Jamieson stated he was "referring to Mr. Normandin's attempt to get a building permit relative to the Laynes Shores beach area which you have used for years to gain access to Hager Park which everybody knows is a beach area. It is called the Laynes Shore beach area right across from the paper street called Ingram Ave. This is exactly why Mrs. Colleen Picard sought to sue the Town because the Town was not protecting the fact that this beach area would have attached to all those back lots she owned. The fact of the matter for the record I am going to state that Marie and I and Mr. Peter Monroe were on the Planning Board when former Zoning Enforcement Officer Mr. Robert Thorell came to the Planning Board as a result of requests Mr. Franciosi and his wife who at that time questioned whether that lot was buildable for zoning purposes. The determination that was made at that time was that this is a beach area, a restriction of record, no building permit may issue unless the plan is amended pursuant to the very statute that you people are charged with implementing. And furthermore I came before this Board just before there was a decision at Worcester Superior Court and I told this Board and I gave this Board all the cases that I am again going to give this Board..." Marie asked a question: What was the other beach area you were referring to?

Mr. Jamieson: "My beach area" Mr. Jamieson presented a time stamped (Oct 11, 2016) subdivision plan for the record showing a recorded plan from the North Worcester County Registry of Deeds, Book 144 Pages 6 and 7. Mr. Jamieson: "I also have the deed of record... this is your baby..."

At that point Mr. Jamieson identified Mr. Johnson, Ms. Campbell, Mr. Smith, Ms. James. "These people here all live on Patricia Road. Patricia Road is part of the Laynes Shore subdivision and in each and every one of their deeds, they have an express right to use this beach area. There is no way a building permit can even be entertained by the Zoning Board of Appeals. There is no way that the Planning Board can make any positive recommendation because I have the case right here and I gave this to the Planning board, I have given it to all Town Officials, it's called TAYLOR

CONSTRUCTION COMPANY vs. PLANNING BOARD of NORTHBRIDGE and you will see this is a complete comparison where in my experiences if any one of these people came to me and said my beach area is being (? word not understandable on tape) I would be making some telephone call and I would like to put this into the record and also I have the restriction of record to put in here and

also this is your zoning code. And I would just like you to read the definition of lot in your own zoning code which it's your jurisdiction to make sure that when processing a plan everything is complied with. That when a application presuming relief such as Ms. Picard's appeal which you people didn't comment on could you just read that for me Mr. Wyman as a matter of courtesy the definition of lot, that is a certified copy of the zoning bylaw from the Town Clerk”

Marie read the definition: *The whole area of a single parcel of land undivided by a street under one ownership, with ascertainable boundaries established by deed or deeds of record or a segment of land ownership defined by lot boundary lines on a land division plan duly approved by the Planning Board under the Subdivision Control Statute.*

Mr Jamieson: “This is the Planning Boards plan that's approved and the date of this approval is right here. It was not in the 40s. This is not the Edro Isle subdivision plan. What he (presumably referring to Stephen?) was talking about here was my subdivision plan, was your subdivision plan Mr. Wyman, it's our beach areas which we have express rights to also so you see, my parents in 1967 purchased.” Jon told Mr. Jamieson “just so you know I was not referring to that” Mr. Jamieson went on... “you have to understand this is all pertinent information about land developed by Mr. Henry Fredette who place a life restriction on the Washington Drive subdivision which limits it to four lots. And even if somebody came in and got an endorsement as an Approval Not Required, which you people understand the import of that, you would understand that they can't get it.”

Mr. Kenneth Smith? told the Board “...what is extremely important for you to know is that the first Superior Court Justice split his decision into two pieces,... he ruled on standing and then separately ruled on whether or not it was legal to build on that property and whether or not the Zoning Board made the right decision. When it went to appeal before three more Judges at the Superior Court level, those three Judges unanimously rewarded Mr. Picard's standing but separately discussed and made a decision concerning the legality of building on the lot... the Judges upheld the original determination of the first Superior Court Judge that the Zoning Board was wrong, it is a non-buildable beach area,. There is no easement to a 30 foot beach, a 50 foot beach, any part of the property. The entire lot is designated as a beach, all 33,000 square feet are a beach...our deeds actually read that we have a right to use in common that lot as a beach. So two Superior Court decisions exist declaring that it is a non-buildable beach area. The Supreme Court turned around and moved the standing again in Mr. Normandin's favor. They still kept the other part of the decision separate and in their decision they acknowledged that there were deeded rights of the people to use that property. They did not reverse the decisions of the two Superior Courts. So as it stands right now building on that lot according to the State Superior Court, would be wrong.”

Mr. Jamieson: “For the neighbors here, I would like to as a former Town Official be very specific about this. There can be no change in the definition of this plan absent a modification pursuant to 81W of the subdivision control law. This requires notice to everyone who lives within the subdivision and those who are within the exterior lines of the subdivision. I am going to make a statement here. Mrs. Picard filed an appeal. Mrs. Picard had to put together an abutters list because under zoning, neighbors withing 300 feet of the property lines of the locus are entitled to notice. I have a certified copy of Mrs. Picard's appeal, and it should be the same as Mr. Normandin's appeal because it is the same entire process. In the case I just handed to Attorney CampoBasso which is Northboro Planning Board vs Taylor Construction Company, I sent Mr. Wallace a copy of an email that was sent to the Town Administrator today. He should forward it to all your emails for you to read because it will show you unequivocally that I'm just going to say that I'm not the Planning Board, but if I was the Planning Board Chair I would make only one recommendation here consistent with the findings of the case that Council has right there, it;s an appeals court case I gave

all you folks and Steve knows that it's the law. If you read the case you will see that these are open spaces pursuant to the statute.”

Stephen told those present that “it is not in dispute that the lot in question was labeled on a subdivision plan that the lot was a beach area. That is clear. It is also clear that there were no plan amendments made to the subdivision plan since its original approval that removed the beach designation. The case turns on the old Building Commissioner making the determination that he could issue a building permit for the lot and the abutters still had the right to cross that lot to use the beach. You can make your own assessment to how dubious that assessment was or not. We have a new Building Commissioner in place that is very familiar with subdivision control law and you can read his letter right in here as to the reason for his denial.”

Marie asked if there were any more questions. Mr. Jamieson showed Marie former Commissioner Gallant's determination letter. (also included in the ZBA packet (attachment)).

Mr. Peter CampoBasso told the Board he was “involved with the dispute between Mrs. Picard and Maurice Picard from the inception. There are a lot of issues that are involved in this case. I know the matter is here before this Board for a recommendation based on the new Building Commissioner's determination...The subdivision plan that identifies the lot in question was originally approved by the Planning Board in 1969. It was not recorded at the registry of deeds until sometime in 1971 or 1972. I think a lot of that had to do with the fact that back in the 1960s, when land transfers were made, there was not a legal requirement that the new plan be recorded that showed new lot lines. Sometime in the early 1970s that changed, therefore it necessitated that the plan be recorded. I think what is important, a fact that has been, was overlooked initially, in my opinion, by Mr. Gallant, his determination did not take into consideration that the Town's own records since the early 70s has this lot assessed as a reduced valuation because they classify it as a non-buildable lot. That has been consistent on the Town's property records, and I have copies. I don't know if you take information or if you don't, but it is definitely on the books within the Town as a non-buildable lot. I think that what has been out of the dispute is that when the subdivision plan was approved, there were no covenants that Mr. Fredette created... In all of the deeds that were recorded from the inception of the subdivision plan forward, all of the deeds carry in it, all of the deeds that do not have frontage on Wyman Pond, therefore all of the street lots if you will that are in back of the lake, they all have the same grant to access the beach area. Depending on how you want to classify it, and I think that is why we get caught up into the legal dispute, it was always intended to be a beach area for all of the lots not on Wyman Pond. Not to access the beach. There is no designation for a right of way, there is no designation of an isolated beach area. The lot itself is the beach area. Even when Mr. Fredette back in the day was publicizing the land, he publicized those areas as public beach areas for the people to use and access. The zoning determination is tricky because Mr. Gallant at the time did not take into consideration a lot of the facts that were required and I think if you really read his determination, he basically said that back in 1978 when the zoning law changed, at that time, the building lot would have conformed to the zoning law. He didn't determine that it would conform to the zoning present day and that was part of the confusion. Clearly the Town records have this as a reduced value lot because it is designated as a beach area. The plan has never been modified, it never has been amended, it has never come back. Mr. Jamieson is completely correct. When Michael Franciosi tried to build on this lot, his dad Clement was the original owner of lot 56 and the abutting lot for 10 or 12 years and Mr. Gallant's zoning determination only looked at when Mr. Franciosi owned the property in 1978. The new Building Commissioner, I have been sending letters probably in the last 3 weeks or so, and I didn't realize there were two or three turnovers from Mr. Gallant. There were some interims, because I on behalf of Mr. Picard have requested a determination as well for a couple of reasons but I have never had any type of response on my requests, so I wasn't really

sure what was before the Board tonight. I am assuming it is just an informational session to make a recommendation and I think what the Board needs to take into consideration is the Town's own property cards that have this as a non-buildable lot. And none of that was taken into consideration the last time around which is unfortunate.”

Mr. Jamieson wanted to enter the deed into the record. He told Marie the point he was trying to make was that the Zoning Board should not even take this into consideration until the plan was amended.

Marie noted the plan as approved is what has standing and should stand as is unless it is amended.

Mr. Peter Normandin commented that this is not something that would be decided here tonight. There are very good attorneys on both sides. It is going to go to the Zoning Board and then it will go to court. Mr. Normandin stated he had a decision from the Supreme Court which ruled 7-0. It was not going to end here tonight.

Andrew made a motion to support the Building Commissioners determination that the beach lot is not a building lot. Linda seconded the motion. The Board vote 4-0 to support the Building Commissioners determination.

7:44 p.m. *ZBA Request for Review and Comment: Appeal of Building Commissioner decision determination to allow two units per building within an integrated residential apartment complex; Special Permit to construct six proposed duplexes; and a Variance request for the minimum lot frontage and side yard setbacks (22 Worcester Road).*

Jon read the request for comment. Marie noted this was an affordable housing project on land next to Hager Park. Mr. Normandin showed the Board a conceptual plan for six duplexes drawn by Global for Belanger. He noted that it had all been approved by special permit in 2007 by the Zoning Board. Stephen noted the project had been put on hold to get dimensional variances. Mr. Normandin told the Board the City of Fitchburg had taken/was sold land to construct the Water Treatment Plant reducing the frontage. Mr. Normandin told the Board the ZBA had also acted favorably in 2010 granting a dimensional variance which lapsed after two years. Mr. Normandin showed the Board letters from previous Building Commissioner Robert Thorell and past Commissioner Michael Gallant which both said the same. The new Building Commissioner has ruled that the project is not allowed under current zoning if there is no affordable component. Mr. Normandin showed the Town land that former developer Mr. Belanger had planned to donate to Hager Park as part of the project. Marie told Mr. Normandin that the Belanger project was a “friendly 40B” affordable project and that was why the plans had been previously received a special permit. Without the affordable component it was not allowed as presented.

Mr. Normandin told the Board the project was not affordable with only 12 units. More than twenty units was a break even number for the infrastructure investment per unit required to build an affordable project. He hoped to build three, two and one bedroom duplexes to meet the needs of the market. Smaller units to meet the needs of elderly residents who could no longer afford to stay in their houses. Stephen noted the Master Plan had identified those needs as well as affordable housing. Mr. Normandin noted that affordable housing with all the State paperwork requirements was very hard to build.

Marie noted that the mission of the Planning Board was to provide deeded affordable housing to meet the State required goal of 10% affordable.

Mr. Normandin told the Board his average age rental in Town was 158 years old. There was a need for clean new rental housing in Town.

Mike told the Board that although he agrees with Mr. Normandin that the Town has a need for one two and three bedroom apartments, he would not support the project without the affordable component because of the Town's present Zoning Bylaw. That said, Mike told the Board that as the

Board works on its residential zoning update, they should bear in mind Mr. Normandin's words about a developers cost to provide any smaller bedroom units and the added cost burdens of the affordable component. Just because the Board would like affordable housing does not necessarily mean it will get built, yet the need for rental housing with one, two and three bedrooms will still remain unfilled. The Board is actively working on zoning changes to address those needs right now.

Mike motioned the Board write a comment that although the Board does not support the request because it does not conform to zoning, the ZBA should be aware the PB actively supports the need and is working on a residential zoning component to address the need for more one, two and three bedroom housing through multi-family housing as identified in the Master Plan. Seconded Marie. Voted AIF 5-0.

8:12 p.m. *Planning Board Work Session: Residential zoning changes.*

Stephen reviewed the first drafts of the residential zoning update work for May 2017 Annual Town Meeting. Stephen told the PB he had met with the new Building Commissioner and Mike last Thursday to review the first rough drafts. The accessory structure setbacks language was being worked on to allow accessory structures under 120 feet to be 5 feet. Larger than 120 square feet structures would be required to meet the current setback requirements. Jon asked about updating the definition for accessory structures. Stephen told the Board he is working on that.

The requirement that the front yard width be carried all the way to a building instead of just the required front yard setback had been identified and the was being looked at. Stephen has put out a call to fellow planners for language that might address odd lot shapes.

The Table of Use Items A.3 and A.4 changes for Apartments and Townhouses (now listed as row houses) was being modified with the help of the new Building Commissioners input. Like previous work last year, definition language contained in the Table would be moved to the Definitions Section. Both are only allowed in the R-I zoning district by Special Permit. After discussion with the Building Commissioner, Stephen will work on a second draft for review.

Items A.9, A.12 and A.13 provisions will be moved to a new section in zoning leaving just the item.

Accessory Dwelling units will be made available in all districts by right with some performance standards. After the creation and use of an accessory dwelling for family member use, the unit created may be converted to an apartment. The language to limit it by deed restrictions will be eliminated. The building Commissioner is ok with just upgrading the accessory dwelling to meet the building code requirements of an apartment for its continued use.

The Inclusionary Zoning Chapter will be abandoned at this time. Stephen had written IZ Bylaws for a couple of different towns in the past. Berlin and Charlton. Recent communication with those Towns showed the bylaws had not been used. The six or more unit trigger for requiring affordable housing had been skirted by developers with lots of 5 house subdivisions. Stephen felt that given those results in those towns, he did not think Westminster would fare much better. Stephen told Board members that putting an Inclusionary Bylaw in place and using it is very resource intensive and he feels Westminster would not be able to provide the administrative capacity to manage it. The practical effect of the IZ housing bylaws out there for communities the size of ours are not providing affordable housing. They are operating as a backdoor growth control.

8:42 p.m. *Westminster Business Park Progress Report for September 2016.*

The PB reviewed the Tetra Tech Progress report for September. Jon asked Stephen to send Mr. Powell an email requesting the action items are addressed.

8:43 p.m. *Town Planner Report.*

The Board had no question or comments on the September memo.

8:43 p.m. *Adjourn.*

Marie made a motion to adjourn. Mike seconded. The PB voted AIF to adjourn.

7 Pages of Minutes
Respectfully submitted,
Michael Fortin

10 Attachments :

1. ZBA Request for comment package No. 16-11 dated September 23, 2016: Variance application for Derek Asadoorian to erect a canvas garage at 26 Leominster Street. 21 pages. (*Asadoorian ZBA Application (16-11).pdf*) (*Asadoorian ZBA Hearing Notice (16-11).pdf*)
2. Building Commissioner Thorell letter to Alan Belanger dated April 30, 2007. 2 pages.
3. Building Commissioner Gallant letter to Mr. Peter J. Normandin dated January 14, 2016. 2 pages.
4. Building Commissioner Blanchard letter to Peter Normandin dated August 24, 2016. 2 pages.
5. ZBA Request for comment package No. 16-12 dated September 23, 2016: ZBA Request for Review and Comment: Appeal of Building Commissioner decision determination to allow two units per building within an integrated residential apartment complex; Special Permit to construct six proposed duplexes; and a Variance request for the minimum lot frontage and side yard setbacks (22 Worcester Road). 16 pages. (*Normandin 22 Worcester Road ZBA app.pdf*) (*Normandin ZBA Hearing Notice (16-12) - 22 Worcester Road.pdf*)
6. Laynes Shores Subdivision Plan. NWCRD Book 144 pages 6 and 7. 3 pages.
7. Court Case: Taylor Construction Company vs. Planning board of Northbridge.
8. ZBA Request for comment package No. 16-13 dated 09/12/2016: ZBA Request for Review and Comment: Appeal of Building Commissioner decision that lot at 13 Laurie Lane is not entitled to protection as a pre-existing non-conforming lot for the purpose of building a new housing unit. 52 pages. (*10-20-2016 ZBA 13 Laurie Ln. Application.pdf*) (*10-20-2016 ZBA Notice 13 Laurie Ln.pdf*)
9. Westminster Business Park Progress Report from TetraTech Memo dated October 3, 2016. 2 pages.
10. Town Planner Memo to BoS for September dated September 29, 2016 2 pages. (*Planner Update September 2016.pdf*)